

From: Joel T. Osburn
To: Microsoft ATR
Date: 1/25/02 2:21pm
Subject: Please reject the proposed settlement

A quick review of pertinent Facts:

- * Microsoft had (and maintains) a monopoly on desktop computer operating systems.
- * Microsoft used (and still uses) this monopoly to extend it's reach into other markets.
- * Microsoft developed monopolies in other markets using this general tactic, including but not limited to: internet browsing software, office suites, entry level database software.
- * Microsoft violated a Consent Decree issued 15 July, 1994 (Civil Action # 94-1564, US vs. Microsoft (<http://www.usdoj.gov/atr/cases/f0000/0047.htm>), also as a result of abusing it's monopoly to stifle competition, and extend into new markets.
- * In court, Microsoft, including it's Chairman and it's CEO, repeatedly lied under oath.
- * By extending it's monopoly via these illegal means, Microsoft has grown at unprecedented rates for twenty years, and is one of the richest corporations in the world, with no debt, and a vast amount of cash.

Observations regarding the impact of the above facts on consumers:

- * The price of software in those markets which Microsoft dominates has remained steady while in other markets average prices have dropped.
- * There have been no new innovations in general internet browsing software from Microsoft since they released version 5 of Internet Explorer over four years ago. The pace of innovation previously observed was a direct result of competition that no longer exists. Microsoft's Internet Explorer has yet to conform to published, accepted standards; instead, web developers conform to Internet Explorer's peculiarities rather than the accepted standards. This leads to:

By dominating markets, Microsoft has positioned itself and it's products as a defacto standard by extending it's monopoly. This prevents competition; potential competitors cannot meet an unpublished defacto standard, and therefore cannot compete; products developed in this manner appear substandard to the public, which expects behavior as per the "standard" set by the monopoly. Thus competition is stifled and innovation outside of Microsoft limited to those areas in which Microsoft either cannot or has yet to leverage it's existing monopolies to enter.

The proposed settlement fails to:

- * Compensate any of those affected, either directly or indirectly, by Microsoft's pattern of illegal behavior.
- * Require Microsoft to either adhere to published standards, or publish

those features and behaviors that it has established as defacto standards.

- * Prevent Microsoft from tying any given new product to it's existing monopolies unbeknownst to the general public, through the common practice of requiring Non Disclosure Agreements before any information is exchanged or contract negotiated. Therefore a company must risk it's very existence under threat of lawsuits, in order to accuse Microsoft of repeating it's illegal behavior.

- * Provide expedient, impartial resolution of future examples of the same illegal behavior. A "three strikes" type clause may be appropriate, and I'll note that this particular case is actually a second strike, having been brought about by Microsoft's failing to abide by the Consent Decree it agreed to over seven years ago.

- * Provide any current or future competitors any assurance that they will be able to compete on equal footing, thus raising the requirement to even begin to compete.

- * Prevent Microsoft from holding equity in or substantial contracts with any direct competitors. They currently hold equity in Apple Computer, which is currently the only legitimate competitor for desktop operating systems, and have a major development agreement with Corel, makers of WordPerfect. This creates a potential conflict of interest for those "competitors": Apple Computer stopped shipping Netscape Navigator with it's personal computers, instead shipping Microsoft's Internet Explorer (which defeats Microsoft's argument that Internet Explorer is a part of the Windows Operating System, and, since this was in exchange for \$150 million) constitutes illegal dumping); immediately upon receiving from Microsoft a major influx of capital along with a development contract, Corel stopped development of it's version of the Linux Operating System, and the version of the WordPerfect suite of "office" applications for the Linux Operating system. This would appear to be anti-competitive.

Please reject the proposed settlement; many more appropriate suggestions have been fielded for how to remedy the illegal behavior exhibited by Microsoft.

Thank you for your time.

Sincerely,

Joel T. Osburn